IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 32643 of 2004(J)

OS.58/2003 of SUB COURT,NEYYATTINKARA

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PETITIONER:

B.V.SUNIL KUMAR, ADVOCATE,
S/O.N.BHASKARAN, NARAYANA NILAYAM, PANAVILA,
MULLOOR, VIZHINJAM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.RAJAN
SRI.S.ARUN RAJ

RESPONDENTS:

K.S.HAREESH KUMAR,
CIRCLE INSPECTOR OF POLICE,
VIZHINJAM CIRCLE, VIZHINJAM,
THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 32643 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.58 OF 2003 ON THE FILE OF THE COURT OF SUB JUDGE, NEYYATTINKARA.

EXT.P2 : TRUE COPY OF THE NOTICE DT.23.12.02 SENT BY THE PETITIONER THROUGH HIS COUNSEL TO THE RESPONDENT.

EXT.P3 : TRUE COPY OF THE MEDICO-LEGAL REPORT DT.01.11.2002.

EXT.P4 : TRUE COPY OF THE MEDICO-LEGAL CERTIFICATE (FINAL OPINION) DT.21.01.03.

EXT.P5 : TRUE COPY OF THE AMENDMENT APPLICATION DT.20.07.04 (IA NO.1101 OF 2004) FILED BY THE PLAINTIFF IN OS NO.58 OF 2003 BEFORE THE SUB COURT, NEYYATTINKARA.

EXT.P6 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT.P5 AMENDMENT APPLICATION.

EXT.P7 : TRUE COPY OF THE ORDER DT.21.10.04 OF THE COURT OF SUB JUDGE, NEYYATTINKARA IN IA NO.1101 OF 2004 IN OS NO.58 OF 2003.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32643 OF 2004

Dated this the 23rd day of May, 2007

JUDGMENT

Ext.P7 order of the Subordinate Judge, Thiruvananthapuram by which an application for amendment under order 6 Rule 17 CPC was dismissed is under challenge.

Having regard to the narrow contours of this Court's jurisdiction under Article 227 of the Constitution which is visitorial in nature, I am of the view that this Court will not be justified in interfering with Ext.P7 order. Learned Subordinate Judge has observed that as for the amendment which was sought for in respect of the powers of the respondent a Circle Inspector of Police under Immoral Traffic (Prevention) Act, it is open to the petitioner to make argument in that regard in the absence of the pleadings since the same is in the realm of pure question of law. As regards the other proposed amendments which centered around the FIR and the result of the medical examination, the learned judge has found that the entire evidence in the case is over and the case is posted for hearing, obviously keeping in mind the proviso to Rule 17 of order 6. The learned judge observed that being a practising lawyer the writ petitioner-Plaintiff should be expected to know these facts which were well within his knowledge and that there is no

justification for allowing the amendment at a stage when the entire evidence is over and the case is posted for hearing. I do not find any infirmity in the impugned order. The Writ Petition will stand dismissed. No costs.

PIUS C. KURIAKOSE, JUDGE

btt